

2. Plaintiff seeks to compel the release of records in the custody and control of DHS, including its component agencies USCIS and ICE. Plaintiff is subject to a removal order, which is currently being challenged in a Petition for Review pending in the United States Court of Appeals for the Seventh Circuit (Case No. 08-1429). Plaintiff seeks to compel the release of his immigration file in connection with the pending Petition for Review.

PARTIES, JURISDICTION, AND VENUE

3. Plaintiff Enrique Pardo, is a Cuban national who contends in the pending Petition for Review that he derived U.S. citizenship through his U.S. citizen father as a matter of law. Plaintiff resides in Lyons, Illinois, in Cook County, Illinois.

4. Defendant, United States Department of Homeland Security (“DHS”), is an agency of the United States, as that term is defined at 5 U.S.C. § 551.

5. Defendant, United States Citizenship and Immigration Services (“USCIS”), is a component entity of the Defendant United States Department of Homeland Security, and is an agency of the United States, as that term is defined at 5 U.S.C. § 551. DHS and USCIS have possession of and control over the agency records that Plaintiff seeks.

6. Defendant, United States Immigration and Customs Enforcement (“ICE”), is a component entity of the Defendant United States Department of Homeland Security, and is an agency of the United States, as that term is defined at 5 U.S.C. § 551. DHS and ICE have possession of and control over the agency records that Plaintiff seeks.

7. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552 (a)(4)(B).

8. Venue lies in the Northern District of Illinois pursuant to 5 U.S.C. § 552 (a)(4)(B), in that the complainant resides within that district.

CLAIM – DOCUMENTS IN DEFENDANTS’ POSSESSION

9. Plaintiff incorporates and re-alleges paragraphs 1-8 above.

10. By letter dated July 29, 2008, to the Freedom of Information Act Office of ICE, a component of DHS, Plaintiff requested a complete copy of all records pertaining to him in the possession of the Defendants. A copy of the July 29, 2008, letter is attached as Ex. A.

11. In a letter dated August 8, 2008, a FOIA officer from ICE, confirmed receipt of Plaintiff's request, but referred the request to USCIS, stating that it would have possession of the requested documents. A copy of the August 8, 2008, letter is attached as Ex. B.

12. Plaintiff received a second letter, dated August 29, 2008, from USCIS, confirming receipt of the request and assigning the matter a case number. A copy of that letter is attached as Ex. C.

13. By letter dated October 24, 2008, Plaintiff timely appealed the Defendants' refusal to disclose the responsive documents within its control, pursuant to 6 C.F.R. § 5.9. A copy of the letter is attached as Ex. D.

14. Plaintiff received a third letter, dated October 29, 2008, from USCIS, confirming that Plaintiff's request was still pending, but that 60,000 other requests were in line ahead of the Plaintiff's request. A copy of that letter is attached as Ex. E.

15. Finally, Plaintiff received a letter, dated October 30, 2008, confirming receipt of Plaintiff's appeal, and noting that he was within his rights to file the appeal; but refusing to act any more rapidly on the request or to adjudicate the appeal. A copy of that letter is attached as Ex. F.

16. Neither ICE, USCIS, or DHS have produced any of the documents requested in Plaintiff's FOIA request, nor have they contended that they lack such documents; they have simply failed to respond.

17. Upon information and belief, Defendants have in their possession and control agency records responsive to Plaintiff's FOIA request. Plaintiff has a legal right under FOIA to obtain the agency records Plaintiff requested on July 29, 2008, and there exists no legal basis for Defendant's failure to make available such records.

18. Defendants' failure to make available the records sought by Plaintiff's request violates FOIA, 5 U.S.C. § 552 (a)(3)(A), (a)(6)(A), and (a)(6)(C).

19. The FOIA requires that an agency make a determination within 20 business days after the receipt of an initial FOIA request or an administrative appeal. 5 U.S.C. § 552(a)(6)(A). More than 20 business days have elapsed since the receipt by Defendants of Plaintiff's initial FOIA request and Plaintiff's subsequent administrative appeal. Thus, Plaintiff has exhausted his administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C).

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that the Court:

- a. Expedite the proceedings in this action pursuant to 28 U.S.C. § 1657 (a);
- b. Declare that Defendants' refusal to disclose the records requested by Plaintiff is unlawful;
- c. Order Defendants to disclose the requested records in their entireties and make copies available to Plaintiff;
- d. Enjoin Defendants from refusing to comply with subsequent requests for similar documents;
- e. Award Plaintiff his costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552 (a)(4)(e); and
- f. Grant such other and further relief as the Court may deem just and proper.

Dated: April 29, 2009

Respectfully submitted,

By: s/ Charles Roth
Charles Roth
Attorney for Plaintiff

Charles Roth
croth@heartlandalliance.org
Director of Litigation
National Immigrant Justice Center
208 South LaSalle Street, Suite 1818
Chicago, IL 60604
(312) 660-1613 (T)
(312) 660-1506 (F)